

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Phibro-Tech, Inc.
8851 Dice Road
Santa Fe Springs, California

EPA ID No. CAD 008488025

Respondent.

Docket HWCA 2004 0423

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Phibro-Tech Inc., a Delaware corporation doing business in California, (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates, handles, treats, and stores hazardous waste at 8851 Dice Road in Santa Fe Springs, California (the Site). The Department authorized Respondent to manage hazardous waste by issuing Hazardous Waste Facility Permit (Permit) on July 29, 1991. Respondent submitted a new Part A and B Application in January of 1996. On February 28, 1996, the Department authorized Respondent to continue operating under the conditions of the July 29, 1991 Permit. The Permit expired on July 29, 1996.

2. The Department inspected the Site on April 14 and 15, 2003, June 3, 4, 7, and 8, 2004, June 27, 28 and 30, 2005, August 18, 22, and 23, 2005, and March 1 and 3, 2006.

3. The Department alleges the following violations:

3.1. Respondent violated Health and Safety Code section 25202 (a); California Code of Regulations, title 22, section 66270.30; and Hazardous Waste Facility Permit section III.C.2.e., in that on or about August 18, 2005, Respondent stored drums contaminated with hazardous waste at the drum wash pad, which is not authorized for storage of hazardous waste.

3.2. Respondent violated California Code of Regulations, title 22, section 66270.30 and Hazardous Waste Facility Permit, section III.C.3.a(2) in that on or about April 15, 2003, Respondent failed to conduct tank assessments, and obtain certification for those assessments, every three years as required by permit.

3.3. Respondent violated California Code of Regulations, title 22, section 66264.73(b)(2), in that on or about April 15, 2003 and August 18, 2005, Respondent failed to record accurately in the operating record the quantity and location of each hazardous waste received.

3.4. Respondent violated Health and Safety Code, section 25202, subdivision (a), California Code of Regulations, title 22, section 66270.30; and Hazardous Waste Facility Permit, section III.E., in that on or about April 15, 2003, Respondent off-loaded bulk liquids to the Main Sump at the wastewater treatment system. Respondent is authorized by permit to empty only containerized waste into the Main Sump at this location.

3.5. Respondent violated California Code of Regulations, title 22, sections 66264.175(b) (5) and 66264.196(b)(3)(B), and Hazardous Waste Facility Permit Section III.C.3.b.(3), in that on or about April 15, 2003, August 18, 2005 and March 1, 2006, Respondent failed to remove hazardous waste liquids from the secondary containment in a timely manner, to wit: (a) on April 15, 2003, hazardous waste liquids had accumulated at the sump at the drum wash pad; (b) on August 18, 2005, waste liquids had accumulated in the secondary containment next to tank F2A; (c) on August 18,

2005, waste liquids had accumulated in the sump located at the Area "F" secondary containment; (d) on August 18, 2005, waste liquid and sludge had accumulated in the sump located at the secondary containment for the copper carbonate production tanks; (e) on March 1, 2006, waste copper sludge and drum rinsing solution had accumulated in the sump located at the drum wash pad north of Area C; and (f) on March 1, 2006 copper sulfate solution and sludge had accumulated in the secondary containment of Area "S."

3.6. Respondent violated California Code of Regulations, title 22, section 66264.193(b) in that on or about August 18, 2005 and March 1, 2006, Respondent failed to maintain the secondary containment free from cracks or gaps, to wit: the fiberglass coating at the "F" tank area storage area was cracked and peeling.

3.7. Respondent violated California Code of Regulations, title 22, section 66264.177(c) in that on or about June 27, 2005, Respondent failed to separate incompatibles by means of a dike, berm, wall or other device. At ERS-1, pallets of drums containing sodium hydroxide, potassium hydroxide, and acidic waste were stored adjacent to each other without separation. By the north fence of ERS-1, eight drums of sodium hydroxide were stored between two rows of acidic wastes without separation. At ERS-2, drums of waste hydrochloric acid were stored adjacent to 12 drums of spent alkaline etchant without separation; and one drum of miscellaneous acid (acetic acid, hydrofluoric acid) was stored under and between drums of alkaline wastes without separation.

3.8. Respondent violated California Code of Regulations, title 22, section 66264.15(b), (c), and (d) and Hazardous Waste Facility Permit Section III.M, in that on or about June 28, 2005, Respondent failed to identify a problem on the daily inspection log, to wit: the daily inspection log did not identify tank seepage at tank F2A.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violations occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1.1. Effective immediately, Respondent shall follow the drum washing procedures set forth in Respondents' November 13, 2006 letter to the Department.

Respondent shall not otherwise place or store hazardous wastes outside the permitted areas, without authorization from the Department. Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.1.2. Effective immediately, Respondent shall conduct tank assessments, and obtain certification for those assessments, every three years or as required by its Permit.

10.1.3. Effective immediately, Respondent agrees to use updated computer software to record accurately in its Operating Record the location of each hazardous waste within the facility and the quantity at each location. Such computer

software shall have the capability to specifically track each wastestream listed on the same manifest and shall also have the capability to correlate pumping times with each wastestream listed. Such computer software must further allow for specific tracking of waste throughout the facility. Respondent further agrees that if said computer software program proves ineffective, Respondent will replace it with a revised version to accurately track waste in accordance with the requirements stated herein. Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.1.4. Respondent provided the Department with a Main Sump Operating Procedure on March 6, 2007. Said Main Sump Operating Procedure includes sufficient data to demonstrate that offloading liquids into the Main Sump does not overload the system. The Main Sump Operating Procedures shall insure that the offloading of bulk waste will not damage the integrity of the system or cause the system to overflow. Respondent shall follow the Department-approved Main Sump Operating Procedure for offloading liquids into the Main Sump until the Main Sump is taken out of service and the Department is notified of its removal. If the Department determines that Respondent's Main Sump Operating Procedure is inadequate, Respondent shall submit, with supporting reasons, a revised Main Sump Operating Procedure to address the Department's concerns within 30 days of written notice of the Department's determination. Respondent shall notify the Department 15 days prior to removal of the Main Sump. Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.1.5. Effective immediately, Respondent shall not store hazardous

waste in sumps in secondary containment. Secondary containment shall not be used for containment of liquid from daily operational activities or other waste management activities. All hazardous waste releases shall be cleaned up in a timely manner. Further, every release of hazardous wastes shall be identified in the daily inspection log; the time and method of clean up of such release shall also be identified in the log. Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.1.6. Effective immediately, Respondent shall repair the cracks and gaps of its secondary containment structures in accordance with the procedures submitted to the Department on January 23, 2006. Any area that has a crack or gap shall be taken out of service until the crack or gap has been repaired. If the Department determines that Respondent's procedure for repair of cracks and gaps in secondary containment is inadequate, Respondent shall submit a revised procedure to address the Department's concerns within 30 days of written notice of the Department's determination with supporting reasons. Respondent shall continue to maintain the integrity of its secondary containment structures and their corresponding protective coatings to prevent the possibility of release in accordance with the foregoing procedures. Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.1.7. Effective immediately, Respondent shall comply with the requirements of California Code of Regulations, title 22, section 66264.177(c) with respect to storage of incompatible waste.

10.1.8. Respondent shall accurately record inspections and problems

identified during inspections, and correct any problem identified during inspections in an inspection log in accordance with the requirements of California Code of Regulations, title 22, section 66264.15 (d). Respondent shall comply with the requirements of California Code of Regulations, title 22, section 66264.15(c). Once Respondent's permit becomes effective, Respondent shall follow the terms and conditions of its permit rather than this paragraph's compliance language. If the permit is silent, Respondent shall continue to follow this paragraph's compliance language.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
1011 North Grandview Avenue
Glendale, California 91201

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment During Implementation: In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Consent Order) is creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such

persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to

this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11.1. Respondent shall pay the Department a total of \$114,000.00 of which \$104,000 is a penalty and \$10,000 is a reimbursement of the Department's costs. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$52,000 of the penalty. Respondent shall pay the remaining \$52,000 penalty to the Department within 180 days of the effective date of this Consent Order. Respondent's check(s) shall be made payable to the Department of Toxic Substances Control, and shall be delivered with the attached Payment Voucher to:

Department of Toxic Substances Control:
Accounting Office
1001 I Street, 21st floor
P. O. Box 806 Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue Glendale, California 91201

To: Debra Schwartz, Staff Counsel
Office of Legal Affairs
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection, including attorney's fees.

11.2. Respondent hereby agrees to send one employee to the California Compliance School, Modules I-IV. Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department of Toxic Substances Control within 185 days of the date of this Order. In recognition of this educational investment, the penalty imposed by this Order has been reduced by \$5,000.00 if the employee satisfactorily completes the specified school and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Order. If Respondent fails to submit the certificate as required, the penalty of \$5,000.00 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a Department Branch Chief upon a written request demonstrating good cause from Respondent.

11.3. Respondent agrees to provide the Department with a current ISO 14001 Certificate. Respondent also agrees to perform an annual surveillance audit, and provide documentation to the Department of such audit within 30 days of such audit. Currently, Respondent's next annual surveillance audit is scheduled for August 2007. If the date of the August 2007 audit is changed, Respondent shall notify the Department of such change within 15 days of the change and provide a new date. Respondent

further agrees to provide the Department with documentation of its ISO 14001 recertification audit, which is currently scheduled for August 2008. If the date of the August 2008 recertification audit is changed, Respondent shall notify the Department of such change within 15 days of the change and provide a new date. The Department has included a downward adjustment of 15%, or \$22,275, in recognition of Respondent's ISO 14001 Certificate, as authorized pursuant to California Code of Regulations, title 22, section 66272.68, subdivision c). If Respondent fails to submit the Certificate and audits as required, and without demonstrating good cause, the penalty of \$22,275 is due and payable upon demand by the Department. Respondent must provide written documentation of good cause, for Department approval, to a Department Branch Chief.

11.4. Within 30 days of the effective date of this Consent Order, Respondent shall pay \$10,000 to the Environmental Education Account of the California Protection Agency. Respondent shall pay with a check made payable to "Environmental Education Account (Fund 8020) and send that check to Judy Tanimoto, Fiscal Office, California Environmental Protection Agency, P.O. Box 2815, Sacramento, CA 95812-2815. Respondent shall give notice of the payment to Linda S. Adams, Assistant Secretary for Fiscal and Administrative Programs at the same address and Florence Gharibian and Debra Schwartz, at the address listed above.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable

provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: 7/25/07

Original signed by: Dwight Glover
Dwight Glover, President
Phibro-Tech, Inc.

Dated: 7/30/07

Original signed by: Florence Gharibian
Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division
Department of Toxic Substances Control